

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WELLONS, INC., an Oregon corporation,

Plaintiff,

v.

SIA ENERGOREMONTA RIGA LTD., a
Latvian limited liability company,

Defendant.

CASE NO. C13-5654 RJB

ORDER ON DEFENDANT
ENERGOREMONTA RIGA, LTD.'S
MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION,
FORUM NON CONVENIENS, OR
COMITY

This matter comes before the court on Defendant Energoremonts Riga, LTD.'s Motion to Dismiss for Lack of Personal Jurisdiction, Forum Non Conveniens, or Comity. Dkt. 10. The court has considered the relevant documents and the remainder of the file herein.

PROCEDURAL HISTORY

On May 20, 2013, plaintiff Wellons, Inc. (Wellons), an Oregon corporation that does business in Clark County, Washington, filed this civil case in Clark County Superior Court against Sia Energoremonts Riga LTD, (SER) a Latvian limited liability company, asserting

breach of contract. Dkt. 1. On August 2, 2013, the case was removed to federal court on the basis of diversity of citizenship. Dkt. 1, at 2.

MOTION TO DISMISS

On August 9, 2013, SER filed a motion to dismiss, contending that (1) there is no basis for personal jurisdiction over SER, a Latvian company; (2) the case should be dismissed on the basis of *forum non conveniens* because Latvia is the proper forum for this dispute; and (3) the case should be dismissed under the principles of international comity, in favor of a forum in Latvia. Dkt. 10.

On September 9, 2013, Wellons filed its opposition, arguing that SER's communications with Washington residents, visit to Washington to negotiate the contract, and ongoing business relationship with Wellons were sufficient to establish personal jurisdiction. Wellons also contends that neither forum is favorable in comparison to the other so the case should not be dismissed under *forum non conveniens* or the principles of international comity. Dkt. 13.

SER filed its reply on September 13, 2013.

RELEVANT FACTS

Introduction. Plaintiff Wellons is an Oregon Corporation with its corporate offices in Vancouver, Washington. Dkt. 14, at 1. Dave Butler is a sales director and project manager from Wellons, and he was the main point of contact for Defendant SER with Wellons. Dkt. 14, at 1. Mr. Butler works out of Wellons' Vancouver office, as well as his home office in Gig Harbor, Washington. *Id.*

Defendant SER is a Latvian industrial construction company specializing in the design and construction of large scale heating and power plants. Dkt. 11, at 1. SER is located in Riga,

1 Latvia. *Id.* SER has no offices in the United States, no agents in the United States, and no
2 projects in the United States. *Id.* at 4.

3 This dispute arose out of a heating and power plant in Riga that SER constructed for
4 Rigas Siltums, a Latvian heating utility owned in part by the Latvian Ministry of Economics and
5 the municipality of Riga. *Id.* at 2. Wellons provided a wood-fired boiler system for the plant,
6 and, after a boiler component malfunctioned during installation, SER declined to pay Wellons
7 everything owed under the contract. *Id.*, at 9. Consequently, Wellons brought this suit to
8 recover the full amount due on the contract. Dkt. 1-1, at 4-5.

9 ***Contract Negotiations Begin.*** The parties began negotiating in the summer of 2009.
10 Dkt. 11, at 2. According to Ingars Draudzins, SER's Thermopower plants and Boiler Houses
11 Department Director, Gandras Energoefektas (Gandras) introduced SER to Wellons. *Id.*
12 Gandras is a Lithuanian company and was one of SER's suppliers for equipment. *Id.* Following
13 this introduction, Mr. Butler met with SER representatives in Latvia. Dkt. 14, at 1. This
14 meeting, which also took place in the summer of 2009, was the first meeting of the parties. *Id.*

15 The parties continued to correspond via e-mail messages, Skype phone calls, and in-
16 person meetings. Dkt. 14, at 1; Dkt. 11, at 3. Although Mr. Butler was sometimes traveling
17 while communicating with SER, the communications between Latvia and Washington State were
18 frequent throughout the business relationship. Dkt. 11, at 6; Dkt. 14-1, at 2. In his declaration,
19 Mr. Butler stated that he has 213 email messages on his computer from SER to him, "along with a
20 few to other representatives of Wellons." Dkt. 14, at 2. "The vast majority of these" were sent to
21 Mr. Butler while he was present in Washington State. *Id.* Mr. Butler also has 285 email
22 messages that he sent to SER, "including a few that were sent by other Wellons' representatives."
23 *Id.* "The vast majority of these were sent from Washington state" as well. *Id.*

1 According to SER, communications ran though Gandras until at least March of 2010.
2 Dkt. 11, at 3. Soon after, SER began working directly with Wellons as SER prepared its bid to
3 construct the heating and power plant in Riga. *Id.* Ultimately, Mr. Butler emailed SER (copying
4 Gandras) an offer containing technical and pricing information in March 2010 (the Offer). Dkt.
5 11, at 3. SER incorporated the Offer into its final bid. Dkt. 10, at 4.

6 SER continued to cultivate its relationship with Wellons through April of 2010, and
7 visited an operating Wellons' boiler in Russia. Dkt. 11, at 4. SER also requested Wellons send
8 some brochures about Wellons broilers. Dkt. 14-1, at 4.

9 ***SER Contracts with Wellons.*** At the end of 2010, SER learned from Rigas Siltums that
10 it had been awarded the project. Dkt. 11, at 4. On January 6, 2011, SER sent an email to
11 Wellons asking Wellons to send a "standard contract draft," in the hope that it would be a "good
12 start of long term cooperation for future!!!" Dkt. 14-1, at 6. Mr. Butler suggested that the parties
13 "sit down and work through the various specifics of the project. *Id.*, at 7. SER agreed, e-mailing
14 that "we must discuss all the items asap." *Id.* at 6.

15 SER and Wellons then arranged for SER to travel from Latvia to Wellons' corporate
16 offices in Vancouver to discuss the contract. *Id.* at 7. Mr. Butler recommended by e-mail
17 message that SER fly into Portland, Oregon, as the Portland airport was only 15 minutes from
18 Wellons' offices in Vancouver. *Id.* The parties then contemplated spending one day touring a
19 plant south of Portland, which had a Wellons boiler; and two days discussing the contract
20 proposal at Wellons' offices in Vancouver. *Id.*, at 6; Dkt. 11, at 3.

21 Wellons also provided SER with an "expected" schedule for the project. Dkt. 14-1, at 7.
22 This schedule estimated that the boiler would be in operation 64 weeks after the contract was
23 signed. *Id.* Wellons' work in its facilities stateside (engineering, designing, manufacturing,

1 procuring, and shipping the boiler components) was estimated to take 52 weeks. *Id.* Installation
2 was estimated to start 36 weeks into the project, and the system would be in operation 28 weeks
3 later. *Id.*

4 One week later three SER employees (Pavels Arsenjans, Janis Vilmanis, and Ingars
5 Draudzins) flew from Riga to Portland and followed the contemplated itinerary. Dkt. 11, at 4.
6 Mr. Draudzins indicated that SER toured the plant south of Portland, and then spent two days
7 discussing the contract proposal at Wellons' offices in Vancouver, WA. *Id.* The SER employees
8 stayed at a hotel in Portland. *Id.*

9
10 Negotiations continued after the SER representatives returned to Riga, and the contract
11 was finalized by early February. Dkt. 11, at 45. SER signed on February 10th, 2011, and
12 Wellons signed on February 11th. *Id.*, at 5; Dkt. 11-1, at 58.

13 ***Contract Details.*** The contract's cover page reflects that it was prepared by Wellons for
14 SER. *Id.* at 13. Wellons' address is listed on the front page as "2525 West Firestone Lane,
15 Vancouver, Washington 98660." *Id.* The cover page separately provides that Wellons'
16 headquarters is in Vancouver. *Id.* Overall, the contract details a general list of services that
17 Wellons will provide via its own facilities: "The proposed scope covers engineering and design of
18 the boiler, furnace and associated air and gas handling systems, manufacturing of the steam
19 generator and combustion equipment, and procurement of the plant equipment enumerated in
20 this proposal. The scope also includes technical assistance with mechanical installation and
21 commissioning on a per diem basis." *Id.*, at 15. The contract further provides that all shipments
22 would depart from either Vancouver, Washington, or Sherwood, Oregon: "Wellons will prepare
23 all equipment for overseas shipment and will load the equipment into standard or hi-cube

containers, provided by the Purchaser to Wellons facilities in Vancouver, WA or Sherwood, OR, USA.” *Id.* at 46. Price calculations similarly anticipated that the equipment would ship from Vancouver: “Prices shown [in the contract] are Ex-Works, Vancouver, Washington, USA, loaded into Purchaser’s containers for overseas shipment.” *Id.* at 48. SER agreed to pay Wellons a total price in U.S. Dollars of \$5,250,000. *Id.* at 47. The preliminary delivery schedule estimated that final delivery would take Wellons 50 weeks from the date of initial deposit. *Id.* at 48. The contract makes no mention of applicable law or choice of forum.

During the course of the contract, SER made payments by depositing money into Wellons’ accounts in either Portland, Oregon, or Minneapolis, Minnesota. Dkt. 11, at 5. SER’s bank for the project was SEB banka in Latvia. Dkt. 11, at 5.

Execution of the Contract. Work on the project began soon after the contract’s finalization. “Wellons made the boiler components, then, the components were shipped to Latvia by the Arco Transport company, an Estonian company with offices in Estonia and Latvia.” Dkt. 11, at 5. Meanwhile, SER constructed the rest of the heating and power plant in Riga. *Id.*, at 5-6. The final shipment left Wellons facilities by January 6, 2012. Dkt. 14-1, at 14. A total of 41 containers were sent from Wellons’ facilities to Riga. *Id.*

The contract also obligated Wellons to provide “technical assistance with mechanical installation and commissioning on a per diem basis.” Dkt 11-1, at 15. Wellons employees traveled to Riga multiple times to assist with commissioning the plant. Dkt. 11, at 6.

Boiler Malfunctions. On January 28, 2013, Mr. Draudzins e-mailed Mr. Butler and informed him that a safety valve for the boiler had a problem. Dkt. 11, at 6. Mr. Draudzins explained that SER had decided to stop work to dismantle and inspect the safety valve. *Id.* at 7.

1 Wellons sent an employee, Pete Harwood, to Riga to assist with the issues. *Id.* Wellons
2 ended up ordering a new safety valve from its supplier, Farris Engineering. *Id.* Wellons'
3 engineers also sent ideas on how to fix the valve situation to Mr. Harwood and others working on
4 the problem in Riga. *Id.*

5 The second valve did not work either. *Id.* SER emailed Mr. Butler to notify him and
6 urgently requested that he send a technical expert from Farris to check the valve in the field and
7 determine the cause of the problem. *Id.* SER believed the Farris factory to be located in Ohio,
8 but soon Farris' parent company in the United Kingdom became involved. *Id.* at 7-8. On
9 February 20, 2013, Mr. Butler notified SER that the valves would have to go to a factory for
10 testing because Farris did not offer field service. *Id.* at 8.

11 On February 23, 2013, Mr. Draudzins e-mailed Mr. Butler, stating that SER had been
12 able to get the boiler working at an 80% load through a repair of the first valve, but the boiler
13 still could not be run up to 100% because of the risk that the safety valve could once again fail.
14 Dkt. 11, at 8. Mr. Draudzins stated in the e-mail that, because Wellons and Farris had offered no
15 solutions other than to send the valve to the factory, SER was forced to order a new valve from
16 another manufacturer. Dkt. 11, at 8.

17 The new valve SER purchased and installed was supplied by Gandras and manufactured
18 by a Russian company, TKZ Krasnij kotelshik. Dkt. 11, at 9.

19 The official opening of the plant was February 28, 2013, and was attended by
20 government representatives, media, and others. Dkt. 11, at 9. SER had the plant running by
21 then, on a reduced load, at approximately half power. Dkt. 11, at 9. SER maintains that the
22 boiler continues to operate at well below capacity and specification. Dkt. 11, at 10.

1 Wellons sent SER invoices for the remainder due under the contract. Dkt. 11, at 9. SER
2 protested, and alerted Wellons to additional problems discovered by Rigas Siltums shortly after
3 the plant's opening. Dkt. 11, at 9. Wellons continued to demand payment. Dkt. 11, at 9. This
4 lawsuit ensued.

5 ***Other Orders.*** During the course of the contract, the two parties discussed other orders
6 and projects. First, in August of 2012, SER requested that Wellons order a pipe for a shoot
7 blower. Dkt. 14-1, at 16. Later that same month, Wellons sent SER a proposal for another
8 project called the NZ Sabiedviba project. *Id.* at 18. Additionally, SER ordered a pressure switch
9 from Wellons in early 2013.

10 LATVIAN JUDICIAL SYSTEM

11 According to Līga Fjodorova, an attorney at law authorized to practice law in Latvia,
12 Latvian courts have jurisdiction over all civil legal disputes unless otherwise provided for by
13 law, under Section 23 of the Latvian Civil Procedure Law (CPL). Dkt. 12, at 2-3. It is a general
14 principle under Latvian Civil Procedure Law Section 26, that the jurisdiction is the place of
15 defendant's domicile. Dkt. 12, at 3. In this case, if suing in Latvia, plaintiff would presumably
16 bring the case in the regional court because the dispute exceeds 150,000 Lats (Ls)
17 (approximately \$285,000). Dkt. 12, at 4.

18 Trial in that court would be before a judge, and a party could appeal a judgment in that
19 court to the Latvian Supreme Court. Dkt. 12, at 4. A defendant could also assert a counterclaim
20 in the proceeding. Dkt. 12, at 3. Latvian Civil Procedure Law provides procedures for the
21 summoning of witnesses (and subjecting them to fines for failure to appear) and for the securing
22 of evidence. Dkt. 12, at 5-6. Witnesses can appear by video in the appropriate circumstances.
23 Dkt. 12, at 5-6.

DISCUSSION

1. PERSONAL JURISDICTION

Motion. SER moves to dismiss the case for lack of personal jurisdiction, arguing that SER performed no work in Washington and has no presence in Washington; there is no connection between SER and the State of Washington to establish personal jurisdiction over SER; and the one visit SER employees made to Washington is not sufficient to establish the minimum contacts required to subject SER to jurisdiction in Washington. (Dkt. 10)

Legal Standard. Where a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *Schwarzenegger v. Fred Martin Motor Company*, 374 F.3d 797, 800 (9th Cir. 2004). The plaintiff need only make a prima facie showing of the jurisdictional facts to withstand the motion where, as here, the district court rules without holding an evidentiary hearing. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). In order to make a prima facie showing, plaintiff must allege facts that, if true, would be sufficient to establish personal jurisdiction. *Id.* If not directly controverted, plaintiff's version of the facts is taken as true for the purposes of the motion. *Id.* Conflicts between the facts stated in the parties' affidavits must be resolved in plaintiff's favor. *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1108 (9th Cir.2002).

When jurisdiction is not controlled by a federal question, the district court applies the law of the state in which the district court sits to determine whether the plaintiff has met its burden. *Schwarzenegger*, 374 F.3d at 800. However, Washington's long-arm jurisdictional statute is co-extensive with federal due process requirements, so the jurisdictional analysis under state law and federal due process is the same. *Cognigen Networks, Inc. v. Cognigen Corp.*, 174 F.Supp.2d 1134, 1137 (W.D. Wash. 2001). Federal due process requires the defendant to have minimum

1 contacts with the relevant forum. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). A
 2 district court can only exercise personal jurisdiction over a non-resident defendant (absent the
 3 defendant's consent) if the court has (1.1) general jurisdiction or (1.2) specific jurisdiction.
 4 *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).

5 **1.1. General Jurisdiction.**

6 For general jurisdiction to exist over a nonresident defendant, that defendant must engage
 7 in continuous and systematic general business contacts that approximate physical presence in the
 8 forum state. *Schwarzenegger*, 37 F.3d at 801. Factors worthy of consideration include whether
 9 defendant makes sales, solicits or engages in business in the state, serves the state's markets,
 10 designates an agent for service of process, holds a license, or is incorporated there. *Bancroft &*
 11 *Masters, Inc.*, 223 F.3d at 1086. The threshold for satisfying the requirements for general
 12 jurisdiction is substantially greater than that for specific jurisdiction.

13 It is undisputed that at the time the present lawsuit was filed, SER did not have offices,
 14 agents, or projects in the United States. Wellons presents no argument that the threshold for
 15 general jurisdiction has been met, relying entirely on specific jurisdiction in its opposition. This
 16 Court lacks grounds to exercise general jurisdiction over SER.

17 **1.2. Specific Jurisdiction.**

18 The Ninth Circuit has established a three-pronged test for analyzing a claim of specific
 19 jurisdiction: (1) the non-resident must purposefully direct his activities or consummate some
 20 transaction with the forum or resident thereof; or perform some act by which he purposefully
 21 avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits
 22 and protections of its laws; (2) the claim must be one which arises out of or relates to the
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1 defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair
2 play and substantial justice, i.e. it must be reasonable. *Doe v. Unocal Corp.*, 248 F.3d at 923.

3 *Purposeful Availment.* Plaintiff Wellons brings a contract claim in the case at hand, and
4 the relevant inquiry is whether the defendant purposefully availed itself of the privilege of
5 conducting activities in the forum state. *Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
6 *L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006).

7 This first prong is satisfied when the defendant has performed some type of affirmative
8 conduct that allows or promotes the transaction of business within the forum state. *Doe v.*
9 *Unocal Corp.*, 248 F.3d at 924. Contracting with an out-of-state defendant does not
10 automatically establish sufficient contacts to support personal jurisdiction. *Doe v. Unocal Corp.*,
11 248 F.3d at 924. The court must examine the circumstances of the entire transaction, including
12 prior negotiations, contemplated future consequences, contract terms, and the parties' actual
13 course of dealing. *CTVC of Hawaii, Co., Ltd. V. Shinawatra*, 82 Wn. App. 699, 711, 919 P.2d
14 1243 (1996). The "salient factor" in determining purposeful availment is whether the defendant
15 negotiated an ongoing business relationship with a Washington company that has substantive
16 effects and created future obligations in Washington. *SeaHAVN, Ltd. v. Glitmir Bank*, 154 Wn.
17 App. 550, 568, 226 P.3d 141 (2010) (citing *Precision Laboratory Plastics, Inc. v. Micro Test,*
18 *Inc.*, 96 Wn. App. 721, 727 n.5, 981 P.2d 454 (1999)).

19 Here, SER deliberately conducted activities in Washington, the forum state. SER's prior
20 negotiations with Wellons, a company headquartered in Washington, and Mr. Butler, who works
21 and lives in Washington, were extensive. In all, the parties sent almost 500 email messages
22 throughout their business relationship, a "vast majority" of which were to or from Washington
23 State. Dkt. 14, at 2. SER employees traveled from Riga, Latvia, to Wellons' corporate offices in

1 Vancouver, Washington, and spent two days negotiating the contract's details. The fact that the
2 contract was not signed while both parties were in Washington is not dispositive in light of SER's
3 other contacts with the forum state. *See Sorb Oil Corp. v. Batalla Corp.*, 32 Wn. App. 296, 299,
4 647 P.2d 514 (1982) (providing that personal jurisdiction "may be exercised if it is contemplated
5 that some part of the transaction will take place in the forum state, although the transaction is to
6 be consummated elsewhere").

7 Moreover, the contract's terms and the parties' communications reflect future
8 consequences in the forum state. First, SER had the obligation to pay a Washington resident,
9 Wellons, more than \$5 million. The importance of this obligation cannot be overlooked, as
10 Wellons relies on this obligation in the present dispute. Second, the contract expressly provided
11 that Wellons "prepare all equipment for overseas shipment" and load the equipment into shipping
12 containers that would depart from Wellons' facilities in either "Vancouver, WA, or Sherwood, OR,
13 USA." In light of this, SER cannot credibly argue that it did not contemplate future consequences
14 in Washington State. The contract clearly contemplated shipping the boiler components,
15 including the malfunctioning safety valve, out of Washington.

16 SER also cannot seriously dispute the extent of these future consequences in the forum
17 state. Wellons initially envisioned 52 weeks (one full year) of engineering, designing,
18 manufacturing, procuring and/or shipping the boiler's components, all of which took place at its
19 facilities. Construction in Riga, on the other hand, was only estimated to take 28 weeks, nearly
20 half the length of Wellons' commitments. In the end, Wellons' estimates were not far off: the
21 final shipment departed Wellons facilities 47 weeks (roughly 11 months) after the contract was
22 signed. SER cannot credibly argue that it did not anticipate being haled into court in a forum in
23 which such extensive future consequences were contemplated.

1 Finally, SER and Wellons had an ongoing business relationship that created future
2 obligations in Washington State. The two parties were introduced in the summer of 2009 and
3 were still working together in the summer preceding this lawsuit, four years later. SER's own e-
4 mail messages from 2011 reflect its intent to create a "long term" relationship: "I hope that this will
5 be the best project for both companies and good start of long term cooperation for future!!!" Dkt.
6 14-1, at 6. SER substantiated these words by not only finalizing the contract with Wellons, but
7 also discussing two additional orders and one proposal on another project. Placing additional
8 orders creates future obligations in Washington State.

9 SER argues that *Harbor Cold Storage, LLC v. Strawberry Hill, LLC*, 2009 WL 3765361
10 (W.D. Wash. Nov. 9, 2009) is on point. But *Harbor Cold Storage* is distinguishable from the
11 case at hand: there were not extensive communications between the *Harbor Cold Storage*
12 defendant and the forum state, electronic or otherwise; the *Harbor Cold Storage* defendant's
13 discussions while present in the forum state regarded purchasing the land subject to the lease in
14 dispute, not the lease itself; the discussions in the forum state lasted only an hour, did not involve
15 the plaintiff, and occurred while the *Harbor Cold Storage* defendant was in the forum state for
16 personal reasons; the disputed lease contemplated no future consequences in Washington; the
17 court found no ongoing business relationship; and the contract's terms called for Alaska law to
18 govern the dispute. *Id.* at *1-*5.

19 SER relies on *Harbor Cold Storage* to emphasize that personal jurisdiction was denied
20 where negotiations occurred almost exclusively outside of Washington. Dkt. 10, at 12. SER
21 continues by arguing that "the contemplated future consequences of the contract are to occur
22 entirely in Latvia." *Id.* (emphasis added). While Wellons may have had extensive contacts with
23 Latvia, the court's focus in determining personal jurisdiction is on the *defendant's* contacts with
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1 the forum state, and not the plaintiff's contacts with some other forum. *See CTVC of Hawaii, Co.,*
2 *Ltd.*, 82 Wn. App. at 712. It should come as no surprise to SER that its contacts were sufficient
3 to establish personal jurisdiction given *Clairmont v. Genuity, Inc.*, a Western District of
4 Washington case cited in SER's motion. 2004 WL 2287783 (W.D. Wash. Apr. 26, 2004)
5 (defendants were found to have continuing obligations to a forum resident in the form of owed
6 compensation, which, along with multiple phone calls and e-mail messages, was sufficient to
7 satisfy the purposeful availment prong).

8 The record shows that SER's contacts with Washington satisfy the purposeful availment
9 prong. There are at least six reasons this prong has been satisfied: 1) SER's extensive electronic
10 negotiations with the forum state and its residents; 2) SER's deliberate trip to the forum state from
11 Latvia to negotiate the disputed contract; 3) SER's obligation to pay a business headquartered in
12 Washington over \$5,000,000; 4) the contract's shipping terms; 5) the extent of future
13 consequences at Wellons' facilities; and 6) the ongoing business relationship between SER and
14 Wellons.

15 *Arises Out of or Relates To.* Washington courts apply the "but for" test in analyzing the
16 second prong of personal specific jurisdiction. *CTVC of Hawaii, Co., Ltd.*, 82 Wn. App. at 719.
17 Jurisdiction is proper if the events giving rise to the claim would not have occurred "but for" the
18 defendant's transaction of business in the forum. *Id.* The "but for" test preserves the requirement
19 that there be some nexus between the plaintiff's cause of action and the defendant's activities in
20 the state. *Raymond v. Robinson*, 104 Wn. App. 627, 640, 15 P.3d 697 (2001). It is the plaintiff's
21 burden to establish this element. *Id.*

22 SER argues that Wellons' claim arose from the commissioning process in Latvia and not
23 from SER's contacts with Washington. Dkt 10, at 13. However, the inquiry is not whether the
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1 injury took place outside of Washington, but rather whether the cause of action arose out of
2 SER's transaction of business in the forum. *See Callahan v. Keystone Fireworks Mfg. Co.*, 72
3 Wn.2d 823, 841, 435 P.2d 626 (1967).

4 Wellons pleads a breach of contract claim. The purposeful availment analysis above,
5 regarding SER's contacts with Washington, directly addresses SER's contacts in relation to the
6 disputed contract. Wellons' claim would not have arisen "but for" the contract that was largely
7 negotiated in the forum state, and contemplated future consequences in Washington State. Even
8 the part that allegedly malfunctioned in Latvia would not have malfunctioned but for the parties'
9 decision to contract for the construction of a boiler in Latvia. The record establishes that the
10 second prong of personal specific jurisdiction analysis is satisfied.

11 *Reasonableness.* The third and final prong requires the court to determine whether the
12 exercise of personal jurisdiction is reasonable and, thus, comports with traditional notions of fair
13 play and substantial justice. *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1487 (9th
14 Cir. 1993). The bare existence of minimum contacts is not alone sufficient. *Doe v. Unocal*
15 *Corp.*, 248 F.3d at 925. If a defendant presents a compelling case that jurisdiction is
16 unreasonable, the district court may not exercise personal jurisdiction over the defendant and
17 dismissal is required. *Id.*

18 In considering whether the exercise of jurisdiction over a nonresident defendant is
19 reasonable, courts in the Ninth Circuit consider seven factors: (1) the extent of the defendant's
20 purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending
21 in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum
22 state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the
23 controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective

1 relief; and (7) the existence of an alternate forum. *Core-Vent v. Nobel Industries AB*, 11 F.3d at
2 1487-88; see also *Vernon Johnson Family Ltd. P'ship v. Bank One Texas*, 80 F.Supp. 2d 1127,
3 1133-34 (W.D. Wash. 2000) (applying factors). "These factors are not mandatory tests, each of
4 which plaintiff must pass in order for a court properly to assume jurisdiction. Instead, the factors
5 illuminate the considerations of fairness and due process." *Gates v. Learjet Corp. v. Jensen*, 743
6 F.2d 1325, 1332 (9th Cir. 1984) (citing *Hedrick v. Daiko Shoji Co., Ltd., Osaka*, 715 F.2d 1355,
7 1359 (9th Cir.1983)).

8 SER argues that it faces a heavy burden if subjected to a foreign legal system, and the
9 plant itself is located in Latvia, owned by the municipality of Riga, and is of special importance
10 to the Latvian people; the malfunction that led to the present dispute occurred in Latvia, and thus
11 important physical evidence is located in Latvia and not Washington; Wellons was reaching out
12 in SER's region for business, and not vice versa; and the existence of an alternative forum in
13 Latvia. Dkt. 10, at 14-16.

14 Nonetheless, in light of these factors, the exercise of personal jurisdiction here would not
15 be unreasonable. First, SER's contacts with Washington as discussed in the court's purposeful
16 availment analysis above are sufficient to demonstrate a purposeful interjection into the forum
17 state. Among other acts, SER entered into an ongoing business relationship with Wellons. The
18 contract's terms and opening page provided SER with notice that it might be brought into a
19 Washington courtroom.

20 Also, the burden of litigating in Latvia would be equally burdensome on Wellons.
21 Wellons employees may have visited Latvia during the scope of the business relationship, but
22 SER employees visited Washington and negotiated the contract. SER has further demonstrated
23 the ability to conduct business in English, even contracting with Wellons in English. The same
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1 cannot be said for Wellons' capacity to contract and conduct business (and litigate) in Latvian.
2 Lastly, all of Wellons' witnesses are located in Washington State (Dkt. 13, at 7), as are the
3 underlying contract-related documents and Wellons' facilities, which played a major role in the
4 contract's execution. Dkt. 13, at 7.

5 SER's additional arguments regarding sovereignty, Wellons' efforts to expand its business
6 into the region, and the existence of an alternative forum are insufficient to persuade the court.
7 First, the sovereignty factor "is not dispositive because, if given controlling weight, it would
8 always prevent suit against a foreign national in a United States court." *Gates Lear Jet Corp.*, 743
9 F.2d at 1333. Moreover, Washington State has a legitimate interest in providing a forum for a
10 company based in Washington State and protecting the legal rights of Washington residents.
11 *Sorb Oil Corp.*, 32 Wn. App. at 301. A nonresident defendant need not initiate the contact with
12 Washington, so long as a "business relationship" subsequently arose. *Id.* (citing *MBM Fisheries,*
13 *Inc. v. Bollinger Mach. Shop & Shipyard, Inc.*, 60 Wn. App. 414, 423, 804 P.2d 627 (1991));
14 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478-79 (1985). SER cannot expect that all
15 disputes resulting from its deliberate decision to contract internationally will be handled in
16 Latvia.

17 Accordingly, the third prong of personal specific jurisdiction is satisfied.

18 **1.3 Personal Jurisdiction Conclusion**

19 Personal jurisdiction over SER is proper. SER purposefully availed itself of Washington's
20 laws by deliberately conducting business with Washington residents and in Washington State.
21 SER's cause of action would not have arisen but for the contract that was negotiated and executed
22 largely in the forum state. Finally, exercising personal jurisdiction over SER comports with
23

1 traditional notions of fair play and substantial justice in light of the seven reasonableness factors,
2 even assuming the convenience and adequacy of a Latvian forum.

3 2. FORUM NON CONVENIENS

4 SER also argues that the principles of *forum non conveniens* support dismissal of this
5 case in favor of Latvia given the adequate forum available in Latvia, the location of physical
6 evidence in Latvia, the convenience to non-party witnesses, and Riga's special public interest in
7 the project. Dkt. 10, at 16-20.

8 **Legal Standard.** To dismiss on *forum non conveniens* grounds, the moving party must
9 show (1) the existence of an adequate alternative forum and (2) that private and public interest
10 factors balance in favor of dismissal. *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d
11 764, 767 (9th Cir.1991), (citing *Contact Lumber Co. v. P.T. Moges Shipping Co.*, 918 F.2d 1446,
12 1449 (9th Cir.1990)). The private and public interest factors must "strongly favor" trial in a
13 foreign country for the plaintiff's choice of forum to be disturbed. *Lueck v. Sundstrand Corp.*,
14 236 F.3d at 1145 (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509 (1947)). "A showing of
15 convenience by a party who has sued in his home forum will usually outweigh the inconvenience
16 the defendant may have shown." *Id.* (citing *Contact Lumber*, 918 F.2d at 1449 (internal quotation
17 marks omitted)). Where the plaintiff is a United States citizen, the defendant must satisfy a
18 heavy burden of proof." *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1143 (9th cir. 2001) (citing
19 *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 25 (1981)).

20 2.1. Adequate Alternative Forum.

21 The defendant bears the burden of proving the existence of an adequate alternative forum.
22 *Lueck v. Sundstrand Corp.*, 236 F.3d at 1143. A foreign forum will be deemed adequate unless it
23 offers no practical remedy for the plaintiff's complained of wrong. *Id.* at 1144. Given the above

1 discussion of the Latvian Judicial System, it appears SER has carried this burden. Wellons
2 presents no counterargument on this point.

3 **2.2 Private Interest Factors**

4 The court evaluates seven private factors: (1) the residence of the parties and the
5 witnesses; (2) the forum's convenience to the litigants; (3) access to physical evidence and other
6 sources of proof; (4) whether unwilling witnesses can be compelled to testify; (5) the cost of
7 bringing witnesses to trial; (6) the enforceability of the judgment; and (7) "all other practical
8 problems that make trial of a case easy, expeditious and inexpensive." *Lueck v. Sundstrand*
9 *Corp.*, 236 F.3d at 1145 (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)).

10 As Wellons contends, these factors do not *strongly* favor a trial in Latvia. Of special
11 materiality and importance to the present dispute is the malfunctioning safety valve. While the
12 valve allegedly malfunctioned during the commissioning process in Latvia, evidence indicates
13 that the valve was manufactured in a Farris factory in Ohio. Out of convenience, this favors a
14 forum in Washington State more so than in Latvia. Furthermore, the valve, along with all other
15 boiler components, were procured and shipped from Wellons' facilities. Such facilities are also
16 of special importance to the case at hand, and favor a forum in Washington State.

17 Moreover, one party will have to travel to the opposing party's forum regardless of where
18 a trial may be held. In this case, both Wellons and SER demonstrated the capacity to travel to
19 the opposing party's forum. As for witness residences, SER's contention is partly true: key non-
20 party witnesses are located outside of Washington. However, the key non-party witnesses that
21 were involved in the formation and execution of the contract also are not from Latvia. Gandras,
22 the third-party supplier that introduced SER to Wellons, is a Lithuanian company. Arco
23 Transport company, the company that shipped components from Wellons to SER, is an Estonian

1 company. And finally, the safety valve manufacturer appears to maintain a factory in Ohio, and
2 its parent company is in the United Kingdom. Dkt. 11, at 7-8. The parties and witnesses will
3 bear the cost of travelling internationally no matter whether the forum is in Washington State or
4 in Latvia.

5 **2.3 Public Interest Factors**

6 The court also considers a list of five public factors: (1) local interest of lawsuit; (2)
7 court's familiarity with governing law; (3) burden on local courts and juries; (4) congestion in the
8 court; (5) the costs of resolving a dispute unrelated to the forum. *Lueck v. Sundstrand Corp.*, 236
9 F.3d at 1147 (citing *Piper Aircraft*, 454 U.S. at 259-61). As set forth above, the public interest
10 factors must strongly favor trial in a foreign country. *Id.* at 1145.

11 While this court recognizes Latvia's significant local interest in resolving this dispute, the
12 State of Washington also has a significant local interest in protecting its businesses and providing
13 them with a forum to assert their legal rights. Even if this factor weighs slightly in favor of
14 Latvia, the rest of the factors remain even.

15 Presumably, this court is just as familiar with Washington contract law as the Latvian
16 forum is familiar with Latvian contract law. SER argues that Latvian Civil Law "could" apply in
17 addition to the UN Convention on Contracts for the International Sale of Goods, but the choice
18 of law analysis is only determinative when the case involves a United States statute requiring
19 venue in the United States. Dkt. 12, at 6; *Lueck*, 236 F.3d at 1148. Such is not the case here.

20 Furthermore, neither the burden on this court nor the congestion in the court favors
21 dismissal in this case more than any other case. The final factor also does not favor dismissal
22 because this court has already found the dispute to be related to this forum.

1 **2.4 *Forum Non Conveniens Conclusion.***

2 A district court has discretion to decline to exercise jurisdiction in a case where litigation
3 in a foreign forum would be more convenient for the parties. *Lueck*, 236 F.3d at 1142. Given
4 the globally diverse location of the parties, witnesses, and evidence, the court finds that the
5 public and private interest factors do not weigh strongly in favor of a Latvian forum.
6 Accordingly, jurisdiction should remain in this court.

7 **3. INTERNATIONAL COMITY**

8 SER contends that this Court should decline jurisdiction based on International Comity
9 because of the plant's location in Latvia and the project's ties to the Latvian government and
10 people. "In deference to the strong Latvian interests at issue, the Court should abstain from
11 exercising its jurisdiction in the interests of comity." Dkt. 10, at 22.

12 Under the comity doctrine courts sometimes defer to the laws or interests of a foreign
13 country and decline to exercise jurisdiction that is otherwise properly asserted. *Sarei v. Rio*
14 *Tinto, PLC*, 487 F.3d 1193, 1211 (9th Cir. 2007). Invoking the doctrine is within the court's
15 discretion, but the doctrine is limited to cases in which there is in fact a true conflict between
16 domestic and foreign law. *Id.* If a conflict of laws exists, courts then look at the nonexhaustive
17 standards set forth in Foreign Relations Law Restatement Section 403(2):

18 (a) the link between the activity and the territory of the regulating state; (b) the
19 connections between the regulating state and the person principally responsible
20 for the activity; (c) the character of the activity to be regulated and the importance
21 of regulation to the regulating state; (d) the existence of justified expectations that
22 might be protected or hurt by the regulation; (e) the importance of the regulation
to the international political, legal, or economic system; (f) the extent to which the
regulation is consistent with the traditions of the international system; (g) the
extent to which another state may have an interest in regulating the activity; and
(h) the likelihood of conflict with regulation by another state.

23 *Id.* at 1212.

1 No conflict of law exists where a party subject to regulation by two states can comply
2 with the laws of both. *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 799 (1993);
3 Restatement (Third) Foreign Relations Law § 403 cmt. e (1987). The United States Supreme
4 Court in *Hartford* found no conflict of law because the defendant did not argue that the foreign
5 law required it to act in some fashion prohibited by the law of the United States, or that
6 compliance with the laws of both countries is otherwise impossible. *Id.* at 799.

7 Here, SER has demonstrated no conflict of laws. The fact that two nations may exercise
8 jurisdiction over a party is not conclusive in determining whether a conflict of laws exists. SER
9 has not sufficiently demonstrated a difference between Latvian contract law and Washington
10 contract law. Nor has SER demonstrated that Latvian law requires SER to act in some fashion
11 prohibited by the law of the United States, or that compliance with the laws of both countries is
12 otherwise impossible. SER has not met the international comity threshold of demonstrating a
13 conflict of laws.

14 Even assuming a conflict exists, SER has not persuaded the court to decline jurisdiction
15 under the nonexhaustive Restatement factors. Evidence demonstrates a strong connection
16 between Washington State and both the contract and SER. SER had extensive electronic
17 negotiations with Washington and its residents. SER employees traveled to Washington from
18 Latvia to negotiate the disputed contract. Furthermore, the character of this dispute supports the
19 court's decision to retain jurisdiction. SER contracted to pay a business headquartered in
20 Washington over \$5,000,000. The contract included shipping terms that involved Washington.

21 Latvia's interests and SER's expectations are insufficient to persuade the court. This is a
22 contract between two private companies, and SER cannot expect that all disputes resulting from
23 its deliberate decision to contract internationally will be handled in Latvia.

1 Finally, the extent to which another state may have an interest in regulating the activity,
2 as well as the likelihood of conflict with another state's regulation, do not support this court
3 declining jurisdiction any more than they support retaining jurisdiction.

4 SER has made an insufficient showing that this action should be dismissed on the bases
5 of international comity.

6 CONCLUSION

7 For the reasons set forth above, the Defendant's Motion to Dismiss for Lack of Personal
8 Jurisdiction, *Forum Non Conveniens*, or Comity (Dkt. 10) is **DENIED**.

9 IT IS SO ORDERED.

10 Dated this 20th day of September, 2013.

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13 ROBERT J. BRYAN
14 United States District Judge
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